

1
2
3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 S.H. JOHN DOE, a minor child, by and
8 through his Natural Parent and Legal
Guardian, A.O. JANE DOE, et al.,

Case No. 2:17-cv-02380-MMD-PAL

9 Plaintiffs,

ORDER

10 v.

(Am. Pet. Minor Compromise – ECF No. 79)

11 CLARK COUNTY, et al.,

12 Defendants.

13 This matter is before the court on Plaintiffs’ Amended Petition for Minor’s Compromise,
14 Payment of Attorney Fees and Costs, and Creation of Blocked Trust Account (ECF No. 79). This
15 Petition is referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and LR IB 1-3 of the
16 Local Rules of Practice. The court set the matter for hearing on January 17, 2018. Andrea
17 Lagomarsino appeared on behalf of the plaintiffs, Thomas Dillard appeared on behalf of the Clark
18 County defendants, and /// appeared on behalf of the Eagle Quest defendants.

19 **BACKGROUND**

20 The plaintiff is the mother of a minor child, S.H. John Doe who brought this action on
21 behalf of herself and as the natural parent and legal guardian of her son. The minor child was 10
22 years old at the time of the underlying conduct which resulted this lawsuit being filed.

23 The complaint alleges that in August of 2016, the Las Vegas Metropolitan Police
24 Department (“LVMPD”) investigated an incident involving John Doe and his younger sister.
25 Complaint (ECF No. 1) ¶ 29. As a result of the investigation, a case was opened with the Clark
26 County District Attorney’s Office Juvenile Division and John Doe was released to Clark County
27 Juvenile Probation Officer Kevin Brown for transportation and placement in a group home
28 operated by Eagle Quest. *Id.* ¶¶ 30-32. On September 30, 2016, a state judge in the Family-

1 Juvenile Division of the Eighth Judicial District Court ordered John Doe to reside at an Eagle
2 Quest group home, or an alternative replacement during a period of monitoring John Doe until
3 completion of a non-offending parenting course by plaintiff Jane Doe and any other adult living in
4 her home at which time John Doe would be eligible to return to his residence. *Id.* ¶¶ 50-52.

5 The Clark County Department of Juvenile Justice Services (“CCDJJS”) provides services
6 for intervention, guidance, detainment, treatment, counsel, and accountability in juvenile court
7 functions including probation and detention. *Id.* ¶ 19. CCDJJS requested a juvenile psychological
8 evaluation for John Doe to be performed by the Family and Child Treatment of Southern Nevada
9 (“FACT”) to determine appropriate treatment needs, critical risk factors, and any community
10 safety issues. *Id.* ¶ 33. CCDJJS provided documents for FACT’s review, including all
11 documentation related to the incident involving John Doe and his younger sister. *Id.* ¶ 34. On
12 September 1, 2006, the juvenile psychological evaluation was completed which made findings and
13 recommendations. *Id.* ¶ 35. The report opined that because John Doe had such a strong familial
14 support system and was amenable to treatment participation, his prognosis for a favorable outcome
15 was good. *Id.* ¶ 40.

16 The report was provided to family court by Juvenile Probation Officer Brown on
17 September 19, 2016. *Id.* ¶ 44. On September 27, 2016, Juvenile Probation Officer Brown told
18 plaintiff Jane Doe that Juvenile Probation Officer Julianne Hughes was now assigned to John Doe.
19 *Id.* ¶ 47. Brown failed to recommend the supervision and treatment indicated by the report and
20 instead sought alternative placement in a group home setting. *Id.* ¶ 49. On September 30, 2016,
21 a family division juvenile court judge ordered John Doe to reside at an Eagle Quest group home
22 or at an alternative placement as deemed necessary during his period of monitoring. *Id.* ¶ 51. On
23 November 30, 2016, John Doe was released to Jane Doe’s care on the condition that he was not at
24 the same address as his younger sister while Jane Doe was staying at a Siegel Suites. *Id.* ¶ 90.
25 Jane Doe’s financial resources were exhausted, and she was unable to maintain this residence
26 option and John Doe was forced back into Eagle Quest. *Id.* ¶ 91. John Doe was placed in
27 defendants’ Smoke Ranch group home on December 9, 2016. *Id.* ¶ 92. John Doe was 10 years
28 old at the time, small for his age, and defendants Williams and Horn expressed concerns that he

1 was smaller than the other residents. *Id.* ¶¶ 93-96. John Doe reported to his probation officer that
2 people were picking on him and was told not to take it personally. *Id.* ¶ 102. On February 14,
3 2017, at 1:27 a.m., John Doe was in his bedroom asleep and approached by another foster child,
4 forced into the closet of their shared bedroom, and forcibly sodomized. *Id.* ¶ 109. Video
5 surveillance in the bedroom depicted these events. *Id.* ¶ 111.

6 Based on these facts, plaintiffs sued the Clark County defendants and Eagle Quest
7 defendants asserting claims for Fourteenth Amendment violations under Title 42 U.S.C. § 1983
8 for violation of the duty to protect and state created danger, violation of the Federal Adoption
9 Assistance Act and Child Welfare Act, substantive due process under the Nevada Constitution,
10 and multiple state negligence claims against both defendants.

11 On September 25, 2018, plaintiffs reached a settlement with Clark County, and individual
12 defendants Kevin Brown and Julianne Hughes in the amount of \$75,000, \$65,000 of which was
13 allocated to the minor child, and \$10,000 allocated to his mother and guardian ad litem. The
14 settlement was approved by the Clark County Board of Commissioners on November 6, 2018.

15 A written settlement agreement was executed and is attached to plaintiff's verified petition
16 as Exhibit 3. During the hearing, counsel advised that plaintiffs had reached a settlement with
17 Eagle Quest of Nevada, Eagle Quest, Ivan Ray Tippetts and Leslie Tippetts subject to the court's
18 approval of a minor's compromise petition that would soon be filed.

19 At a prior hearing the court denied plaintiffs' initial Motion for Minor's Compromise (ECF
20 No 74) without prejudice directing plaintiffs' counsel to file a verified petition providing the court
21 with additional information in compliance with Nevada and Ninth Circuit law governing approval
22 of a minor's compromise claim. This verified petition was filed as directed. Plaintiffs seek
23 authorization to distribute settlement proceeds as follows:

- 24 1. \$26,000 in attorneys' fees for the \$65,000 recovery on behalf of the minor child,
25 based on a written 40% contingency fee agreement attached as Exhibit 4 to the
26 petition;
- 27 2. Deduction of costs incurred in prosecuting plaintiffs' claims against the Clark
28 County defendants. (Total costs of \$54,700.67 have been incurred of which

1 \$12,298.17 is allocated to prosecution of the case against the Clark County
2 Defendants and \$42,402.50 is allocated to prosecution of the case against the
3 Eagle Quest defendants);

4 3. The balance of \$28,341.18 is to be deposited into a blocked trust account for
5 the minor child, S.H.

6 The Board of County Commissioner's approved the settlement at a regularly scheduled
7 meeting after review of the proposed settlement by the Civil Division of the Clark County District
8 Attorney's Office and the Clark County Liability Pool. No opposition to the petition has been
9 filed and counsel for Clark County has requested the court approve the minor's compromise.

10 **DISCUSSION**

11 Under Nevada law, a parent or guardian must seek the court's approval to compromise a
12 disputed claim held by a minor by filing a verified petition in writing. NRS 41.200. No settlement
13 is effective until it is approved by the court. NRS 41.200(1) ("If an unemancipated minor has a
14 disputed claim . . . , either parent . . . has the right to compromise the claim. Such a compromise is
15 not effective until it is approved by the district court . . . upon a verified petition in writing,
16 regularly filed with the court."); *Haley v. Eighth Jud. Dist. Ct.*, 128 Nev. 171, 176, 273 P.3d 855,
17 859 (2012) (compromise of a minor's claim "is not effective until approved by the district court
18 upon a verified petition in writing.").

19 Rule 17(c) of the Federal Rules of Civil Procedure¹ specifically addresses actions on behalf
20 of a minor or incompetent person, and it provides:

21 **(1) With a Representative.** The following representatives may sue or
22 defend on behalf of a minor or an incompetent person:

- 23 (A) A general guardian;
- 24 (B) A committee;
- (C) A conservator; or
- (D) A like fiduciary.

25 **(2) Without a Representative.** A minor or an incompetent person who
26 does not have a duly appointed representative may sue by a next friend or
27 by a guardian ad litem. The court must appoint a guardian ad litem—or
issue another appropriate order—to protect a minor or incompetent person
who is unrepresented in an action.

28 ¹ All references to a "Rule" or the "Rules" in this Order refer to the Federal Rules of Civil Procedure.

1 In the context of proposed settlements, the Ninth Circuit has recognized that district courts
2 have a special duty under Rule 17(c) “to safeguard the interests of litigants who are minors.”
3 *Robidoux v. Rosengren*, 638 F.3d 1177, 1181–82 (9th Cir. 2011). This “special duty” requires the
4 court “to ‘conduct its own inquiry to determine whether the settlement serves the best interests of
5 the minor’.” *Robidoux*, 638 F.3d at 1181 (quoting *Dacaney v. Mendoza*, 573 F.2d 1075, 1080 (9th
6 Cir. 1978)). The court must independently investigate and evaluate any compromise or settlement
7 of a minor’s claim to assure itself that the minor’s interests are protected, even if the settlement
8 has been recommended and/or negotiated by the minor’s parent or guardian ad litem. *Id.* Federal
9 courts in the Ninth Circuit typically apply state law and local rules governing the award of
10 attorney’s fees. *Id.* In *Robidoux*, however, the Ninth Circuit found that this approach “places
11 undue emphasis on the amount of attorney’s fees provided for in a settlement, instead of focusing
12 on the net recovery of the minor plaintiffs under the proposed agreement.” *Id.* There, the Ninth
13 Circuit held the “district court’s special duty to protect minor plaintiffs requires only that the
14 district court consider whether the net recovery” to the minor is fair and reasonable, without regard
15 to the amount plaintiffs agreed to pay plaintiffs’ counsel. *Id.* at 1182. The Ninth Circuit concluded
16 that if the net recovery to the minor plaintiff under the proposed settlement was fair and reasonable,
17 “the district court should approve the settlement as presented, regardless of the amount the parties
18 agreed to designate for adult co-plaintiffs and attorney’s fees.” *Id.*

19 In *Haley v. Eighth Judicial District Court*, 128 Nev. 171, 177, 273 P.3d 855, 859 (2012), the
20 Nevada Supreme Court noted that Nevada Rule of Civil Procedure 17(c) is nearly identical to its
21 federal counterpart, which the Ninth Circuit had interpreted as charging the court with a “special
22 duty ... to safeguard the interests of litigants who are minors’.” *Id.* at 177, 273 P.3d at 859 (quoting
23 *Robidoux*, 638 F.3d at 1181–82). Citing Ninth Circuit and other federal circuit case law, the
24 Nevada Supreme Court concluded that “NRS 41.200 allows the district court to assess the
25 reasonableness of the petition to approve the compromise of a minor’s claim and to ensure the
26 approval of the proposed compromise is in the minor’s best interest.” *Id.* at 177, 273 P.3d at 860.
27 “This review necessarily entails the authority to review each portion of the proposed compromise
28

1 for reasonableness and to adjust the terms of the settlement accordingly, including the fees and
2 costs to be taken from the minor's recovery." *Id.*

3 During the hearing, counsel for plaintiffs advised that court that a settlement has now been
4 reached with the Eagle Quest defendants subject to the court's approval of the minor's compromise
5 which will soon be filed. Counsel for plaintiffs regard the Eagle Quest defendants as more culpable
6 and with more liability exposure than the Clark County defendants. Additionally, counsel for
7 plaintiffs indicated that counsel for Clark County had defended the case well. Plaintiffs
8 acknowledged the difficulty in proving a § 1983 claim for deliberate indifference against the Clark
9 County defendants. The plaintiff mother was deposed in this case and testified that she did not
10 believe that Clark County had done anything wrong. The sexual assault on the minor child
11 occurred while he was at an Eagle Quest group home pursuant to an order of a state family-juvenile
12 court judge. The tort claims against Clark County defendants are subject to a \$100,000 statutory
13 cap on damages and the parties negotiated in good faith to settle the claims against the Clark
14 County defendants for 75% of the \$100,000 cap.

15 Having thoroughly reviewed and considered the petition, amended petition, supporting
16 exhibits, declaration of counsel, and arguments presented at both hearings, the court finds that the
17 settlement reached with the Clark County defendants is fair and reasonable and in the best interests
18 of the minor child. Of the total \$75,000 settlement, \$65,000 or 86.67% is allocated to settle the
19 claims of the minor child with \$10,000 or 13.33% allocated on behalf of the mother, natural parent,
20 and legal guardian. Of the total costs of \$12,298.17 allocated to prosecuting the case against the
21 Clark County defendants. The costs are allocated using the same ratio is applied to allocate
22 settlement proceeds between mother and child. That is, 86.67% or \$10,658.82 is allocated to costs
23 associated with prosecuting the action on behalf of the minor child with \$1,639.35 or 13.33%
24 allocated to costs to prosecute the action on behalf of the plaintiff mother. After the cost for
25 deduction of attorneys' fees of \$26,000, \$28,341.18 will be deposited into a locked account for the
26 minor child.

27 A substantial, although confidential settlement has now been reached between the plaintiffs
28 and the Eagle Quest defendants subject to the court's approval which will result in additional

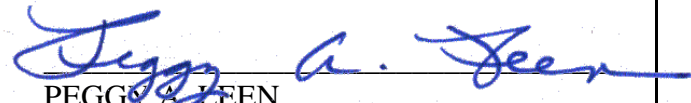
1 recoveries for both plaintiffs. The settlement agreement contains standard terms and conditions in
2 cases of this nature.

3 Accordingly,

4 **IT IS ORDERED:**

- 5 1. Plaintiffs' Amended Petition for Minor's Compromise (ECF No. 79) is **GRANTED**.
6 2. Plaintiffs counsel shall have until **February 1, 2019** to file proof that a blocked account
7 has been set up and settlement proceeds authorized by this order have been deposited.
8 3. No distributions may be made from the blocked account set up for the minor child
9 without the court's approval.

10 Dated this 18th day of January 2019.

11 
12 PEGGY A. LEEN
13 UNITED STATES MAGISTRATE JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28